

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #15	CCRB Case #: 202103714	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/17/2021 1:41 PM	Location of Incident: § 87(2)(b) 70th Precinct stationhouse	Precinct: 70	18 Mo. SOL 12/17/2022	EO SOL 12/17/2022	
Date/Time CV Reported Tue, 06/22/2021 8:11 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/22/2021 8:11 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Filippi	02858	948966	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Paul Casale	16369	954610	070 PCT
2. PO Daniel Smith	11827	955504	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Filippi	Abuse: At § 87(2)(b) in Brooklyn, Sergeant John Filippi threatened § 87(2)(b) with the use of force.	
B.SGT John Filippi	Force: At § 87(2)(b) in Brooklyn, Sergeant John Filippi used physical force against § 87(2)(b)	
C.SGT John Filippi	Abuse: At § 87(2)(b) in Brooklyn, Sergeant John Filippi seized § 87(2)(b)'s property.	
D.SGT John Filippi	Abuse: At the 70th Precinct stationhouse, Sergeant John Filippi searched the vehicle in which § 87(2)(b) was an occupant.	

## Case Summary

On June 22, 2021, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

At approximately 1:41 p.m. on June 17, 2021, § 87(2)(b) was sitting in a parked vehicle in front of § 87(2)(b) in Brooklyn. The vehicle was registered to his mother, § 87(2)(b). § 87(2)(b) was not present at the time. Sergeant John Filippi, Police Officer Paul Casale and Police Officer Daniel Smith of the 70<sup>th</sup> Precinct approached § 87(2)(b). They informed him that he was the subject of an open I-card issued by the 103<sup>rd</sup> Precinct and that they were placing him under arrest. The officers asked § 87(2)(b) to exit the vehicle. After § 87(2)(b) stepped outside, Sergeant Filippi threatened to use a Taser against § 87(2)(b). § 87(2)(b) (Allegation A: Abuse of Authority – Threat of force, § 87(2)(g)). He also allegedly punched him several times on his left hand (Allegation B: Force – Physical force, § 87(2)(g)). The officers placed § 87(2)(b) in handcuffs. Several civilian bystanders, including § 87(2)(b)'s parents, § 87(2)(b) and § 87(2)(b) and his niece § 87(2)(b) gathered around § 87(2)(b) as he was arrested. The officers transported § 87(2)(b) to the 70<sup>th</sup> Precinct stationhouse. Officers also seized the vehicle § 87(2)(b) was sitting in and transported it to the stationhouse, where they searched it (Allegation C: Abuse of Authority – Seizure of property, § 87(2)(g)). Allegation D: Abuse of Authority – Vehicle search, § 87(2)(g).

§ 87(2)(b) was arrested for burglary pursuant to his open I-card (Board Review #01). He was also arrested for possession of a forged instrument and aggravated unlicensed operation (Board Review #02).

The investigation obtained BWC footage from this incident. It is attached in IA #53 and summarized in IA #77 (Board Review #03-04). § 87(2)(b) also provided two clips of cell phone video footage recorded by unidentified bystanders. It is attached in IAs #37-38 and summarized in IA #46 (Board Review #05-07).

## Findings and Recommendations

### Allegation (A) Force: Sergeant John Filippi used physical force against Ulysses #####.

On July 1, 2021, § 87(2)(b) provided a sworn statement to the CCRB. On July 9, 2021, § 87(2)(b) and § 87(2)(b) provided telephone statements (Board Review #08-09). On July 15, 2021, § 87(2)(b) provided a telephone statement (Board Review #10). § 87(2)(b) identified four other witnesses § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b), but the investigation was unable to obtain statements from any of them (Board Review #11). Police Officer Casale and Police Officer Smith were interviewed at the CCRB on February 11, 2022. Sergeant Filippi was interviewed at the CCRB on July 1, 2022.

It is undisputed that on January 23, 2021, investigators from the 103<sup>rd</sup> Precinct Detective Squad issue an I-card for § 87(2)(b). He was wanted for burglary related to a domestic incident involving his girlfriend. The I-card identified § 87(2)(b) as a perpetrator and indicated that there was probable cause to arrest him (Board Review #12). § 87(2)(b) and Police Officer Casale were both familiar with each other prior to this incident, having encountered each other several times in the streets around § 87(2)(b).

It is also undisputed that on June 17, 2021, Sergeant Filippi, Police Officer Casale and Police Officer Smith were on patrol when they noticed § 87(2)(b) sitting by himself in a car parked on the side of the road. All three officers recognized § 87(2)(b) and were aware that he had an active I-card. The officers approached § 87(2)(b) and instructed him to exit the vehicle, intending to arrest him on the I-card. They denied that there was any other reason they were arresting § 87(2)(b). § 87(2)(b) was initially cooperative. He stepped out of the vehicle as requested. The officers then handcuffed him.

§ 87(2)(b) stated that there were several people, including § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b) standing on the street nearby when he first exited his vehicle. He later learned that his nephew, § 87(2)(b) was also observing the incident from a nearby building. Once § 87(2)(b) exited the vehicle, Police Officer Casale grabbed his right arm and tried to pull it behind his back. § 87(2)(b) reflexively tensed his arms. He then reached back into the vehicle and grabbed the driver's seat with his left hand. § 87(2)(b) explained that he took these actions to prevent the officers from handcuffing him since they had not yet explained why they were arresting him. The officers managed to overcome this resistance and handcuffed § 87(2)(b). Sergeant Filippi then drew a Taser and pressed it against § 87(2)(b)'s chest. He then stated, "You're going to get it." § 87(2)(b) estimated that Sergeant Filippi held the Taser there for about ten seconds before putting it back in his holster. § 87(2)(b) denied that he moved or took any other actions after the officers placed him in handcuffs.

§ 87(2)(b) stated that she was inside of § 87(2)(b) at the start of the incident and did not come outside until after § 87(2)(b) was in handcuffs. An unidentified bystander told § 87(2)(b) that the officers had been "too rough" with § 87(2)(b). The bystander may have told § 87(2)(b) that the officers used a Taser on § 87(2)(b) at some point, but § 87(2)(b) was uncertain of this. She did not see this herself.

§ 87(2)(b) stated that the officers handcuffed § 87(2)(b) as soon as they approached him. They had no difficulty gaining control of and restraining him. The officers held § 87(2)(b) against the vehicle for over an hour. During this time, § 87(2)(b) tried to push his body away from the vehicle. Approximately five to ten minutes after the officers handcuffed § 87(2)(b) one of the officers reached for a Taser on their waistband. This officer, however, did not draw, display, or use the Taser.

§ 87(2)(b) stated that he observed the officers struggling with § 87(2)(b) from § 87(2)(b). He ran outside to see what was happening. When he exited the building, he found that the officers had placed § 87(2)(b) in handcuffs. He did not see any officers holding a Taser at any point.

All three officers stated that once § 87(2)(b) exited the vehicle, Police Officer Casale placed his right wrist in handcuffs. § 87(2)(b) tried to prevent them from attaching the handcuffs to his left wrist by holding his arms stiff and by gripping the driver's door with his left hand. Police Officer Casale and Police Officer Smith also stated that § 87(2)(b) (who they estimated to weigh over 350 pounds) tried to lean back on the officers, dropping his weight on top of the officers. All three officers stated that § 87(2)(b) was shouting at the time. Police Officer Casale and Police Officer Smith stated that § 87(2)(b) was shouting insults at them, while Sergeant Filippi stated that he was calling out for his mother, § 87(2)(b). Several people gathered around the officers as they tried to restrain § 87(2)(b). The bystanders stood a few feet away from the officers. All three officers stated that they recognized some of the civilians as known gang members, including one who is currently on trial for murder. Police Officer Smith and Sergeant Filippi did not recall these individuals' names, but Police Officer Casale identified § 87(2)(b).

§ 87(2)(b) as the individual accused of murder. All three officers stated that they were afraid, due to these bystanders' gang affiliations, that they would interfere in § 87(2)(b)'s arrest.

Sergeant Filippi stated that he attempted to gain § 87(2)(b)'s compliance by drawing his Taser and verbally warning that he was about to use it. He did not recall how he phrased this warning. He also pointed the Taser at § 87(2)(b)'s chest and activated the Taser's red targeting laser to provide a visual warning. He chose to use this force option because of his concerns that the bystanders might attempt to interfere in the arrest. § 87(2)(b) did not respond to Sergeant Filippi's warnings. Sergeant Filippi then put his Taser away without using it.

Neither Police Officer Casale nor Police Officer Smith recalled Sergeant Filippi pointing a Taser at § 87(2)(b).

All three officers' BWC footage is attached in IA #53 (Board Review #03). They all recorded § 87(2)(b)'s initial arrest and are generally consistent with each other. Police Officer Casale approaches the driver's side of the parked vehicle and asks him to exit. § 87(2)(b) complies.

At 1:45 into Sergeant Filippi's recording, Police Officer Casale tells § 87(2)(b) that he has an active warrant and that detectives from the 103<sup>rd</sup> Precinct want to talk to him. He then places handcuffs on § 87(2)(b)'s right wrist. At 2:00 into the recording, § 87(2)(b) objects to the arrest, asking to notify his mother so that she can take possession of his property. At 2:55 into the recording, he shouts, "Ma, come get the car!" Police Officer Casale tells him not to resist. Sergeant Filippi tells § 87(2)(b) that he can notify his mother after he is in handcuffs. § 87(2)(b) insists that he wants to talk to his mother first. He shouts towards a nearby apartment building, telling his mother to come outside. At 3:00 into the recording, § 87(2)(b) starts shouting at Police Officer Casale, accusing him of "pulling" on him. He insists that he is not resisting arrest. Sergeant Filippi then reaches for § 87(2)(b)'s left shoulder. He stands with his chest against § 87(2)(b)'s back, which blocks his BWC's view. At 3:10 into the recording, Sergeant Filippi states, "Give me your arm. I'm going to Tase you. Do you want me to Tase you?" The camera then shows that § 87(2)(b) has extended his left arm in front of him, onto the windshield of the vehicle. Sergeant Filippi's right arm is gripping § 87(2)(b)'s left wrist. § 87(2)(b) states, "Bro, stop." Sergeant Filippi holds out a Taser in his left hand and points it towards § 87(2)(b)'s chest. Sergeant Filippi and Police Officer Smith tell § 87(2)(b) to give up control of his arm. § 87(2)(b) turns towards a nearby apartment building and shouts for somebody to come downstairs and take custody of the vehicle. At 3:30 into the recording, Sergeant Filippi's BWC falls from his chest and lands on the ground, facing upwards. The Taser is not seen again after that point.

Police Officer Casale's BWC footage provides a clearer view of § 87(2)(b)'s physical movements before Sergeant Filippi threatens to use his Taser. At 1:50 into Police Officer Casale's recording, he applies the first handcuff to § 87(2)(b)'s right wrist. At 3:00 into the recording, § 87(2)(b) extends his left hand away from Police Officer Casale and shouts, "Y'all just grabbed me out the car! Don't pull on me!" Police Officer Casale states, "Don't square up on me." § 87(2)(b) denies that he is resisting. Sergeant Filippi, standing behind § 87(2)(b), grabs § 87(2)(b)'s left bicep and starts pulling it backwards. § 87(2)(b) turns towards Sergeant Filippi and shouts, "Yo bro, stop." Sergeant Filippi states, "Do you want me to Tase you?" Police Officer Casale and Police Officer Smith pull on § 87(2)(b)'s arms and try to bring them behind his back. At 4:35 into the recording, Police Officer Casale finally handcuffs the two arms together. His BWC then also falls to the ground.

All three officers' BWC recordings show that several civilian bystanders gather around § 87(2)(b).

§ 87(2)(b)'s vehicle after his arrest, including § 87(2)(b) and § 87(2)(b). No other civilians were seen in the vicinity at the start of the struggle. None of the bystanders attempt to physically interfere with § 87(2)(b)'s arrest. § 87(2)(b) the first bystander to arrive, approaches § 87(2)(b) and tells him to stop resisting and cooperate with the officers.

§ 87(2)(b) also provided cell phone footage of the incident, recorded by an unidentified bystander from a nearby apartment window. It is attached in IA #37 (Board Review). At the start of the video, Police Officer Casale and Police Officer Smith are holding § 87(2)(b)'s arms behind his back. Sergeant Filippi is standing in front of him. He is holding a Taser in his left hand and holding it against the front of § 87(2)(b)'s torso. At 0:09 into the recording, he holsters the Taser. He is not seen drawing it again. § 87(2)(b) then approaches § 87(2)(b) and tries to calm him down.

I-card § 87(2)(b) was issued for § 87(2)(b) on January 23, 2021 and was closed on June 18, 2021 after his arrest during this incident (Board Review #12). Included in the I-card is § 87(2)(b)'s arrest history, § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) gave his own weight as 380 pounds. Police Officer Casale estimated that he weighed between 350 and 400 pounds.

Based on the BWC footage, § 87(2)(g) contrary to § 87(2)(b)'s and § 87(2)(b)'s testimony, Sergeant Filippi threatened to use his Taser at the start of the struggle, before § 87(2)(b) was in handcuffs.

The video footage also showed that there were no other civilians in the area when the officers approached and handcuffed § 87(2)(b). While § 87(2)(b) did call out to his mother while being handcuffed, § 87(2)(b) and the other bystanders did not arrive until after he was restrained. They were not present when Sergeant Filippi threatened to use his Taser.

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to ensure the safety of a member of the service of a third person, or when it is reasonable to place a person in custody. All applications of force must be reasonable under the circumstances. Factors to consider when determining if a particular use of force was reasonable include the nature and severity of the crime, actions taken by the subject, the immediacy of the perceived threat or harm to the subject, whether the subject is actively resisting custody, the size, age, and condition of the subject in comparison to the officers, the subject's violent history, and the presence of a hostile crowd (Board Review #13).

NYPD Patrol Guide procedure 221-08 states that conducted energy weapons (CEWs) such as Tasers may be used to subdue aggressive suspects. CEWs should only be used against individuals who are actively resisting officers. Active resistance is defined as physically evasive movements that defeat an officer's attempt to control an individual, including bracing, tensing, and pushing. If possible, officers are directed to issue a warning, both verbally and by using the Taser's electric arc or targeting laser, before using the Taser (Board Review #14)

§ 87(2)(g)

§ 87(2)(b). The BWC footage shows that while § 87(2)(b) was calm and compliant at the start of the interaction, he became uncooperative once Police Officer Casale

placed handcuffs on one of his wrists. He started shouting at the officers and insisted that he would not be handcuffed until after he had a chance to speak to § 87(2)(b). He also extended his other arm away from the officers and held it stiff when Sergeant Filippi tried to pull it behind his back. These actions constituted active resistance to arrest.

Sergeant Filippi explained that he chose to threaten § 87(2)(b) with his Taser because several bystanders had come outside after § 87(2)(b) had started yelling, and he was concerned that they would interfere with the arrest. § 87(2)(g)  
§ 87(2)(b) The officers' BWC footage shows that while § 87(2)(b) did call out to other people when the officers started to handcuff him, he was calling out to his mother so she could take custody of the vehicle. It also shows that the bystanders did not arrive until after the officers applied handcuffs to § 87(2)(b). Furthermore, the first civilian to arrive, § 87(2)(b) actually tried to assist the officers by convincing § 87(2)(b) to cooperate.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

Second, § 87(2)(b)'s size made him difficult to control. While estimates of his weight vary, the balance of accounts and his appearance in the BWC footage indicates that he weighs more than 300 pounds. His physical capability is demonstrated by the fact that it took three officers more than a minute of concerted effort to pull one of § 87(2)(b)'s arms behind his back.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation (B) Abuse of Authority: Sergeant John Filippi threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that when Police Officer Casale handcuffed his right wrist, he tensed his arms and grabbed onto the driver's seat of § 87(2)(b) vehicle with his left hand to prevent the officers from restraining him. Sergeant Filippi then punched § 87(2)(b) six or seven times on his left hand. This broke § 87(2)(b)'s grip on the seat, allowing the officers to pull his left arm behind his back and handcuff him. He denied that any other officers struck him besides Sergeant Filippi. He was not injured by the punches.

§ 87(2)(b) stated that she observed the officers place § 87(2)(b) in handcuffs from her apartment on the third floor of § 87(2)(b). She stated that the officers immediately applied the handcuffs once § 87(2)(b) exited the vehicle. She denied that the officers had any difficulty applying the handcuffs or that they engaged in a struggle with § 87(2)(b). She made no mention of any officers striking § 87(2)(b).

§ 87(2)(b) stated that he was inside his apartment on the twelfth floor of § 87(2)(b) when he saw the officers holding § 87(2)(b) against the side of his vehicle and pulling his arms behind his back. § 87(2)(b) then ran outside to see what was happening. When he exited § 87(2)(b), he found that the officers had placed § 87(2)(b) in handcuffs. § 87(2)(b) did not see the officers use physical force against § 87(2)(b) at any point, including punching him.

§ 87(2)(b) stated that she was inside of § 87(2)(b) at the start of the incident and did not come outside until after § 87(2)(b) was in handcuffs. An unidentified bystander told § 87(2)(b) that officers had been “rough” with § 87(2)(b) but did not elaborate on this remark. § 87(2)(b) did not herself see officers use physical force against § 87(2)(b).

All three officers acknowledged struggling to handcuff § 87(2)(b). They stated that after Police Officer Casale applied handcuffs to § 87(2)(b)'s right wrist, he tried to prevent them from attaching the handcuffs to his left wrist by holding his arms stiff and by gripping the driver's door with his left hand. They overcame this resistance by pulling on § 87(2)(b)'s arms. They denied striking § 87(2)(b) in any way, including punching his hands.

The officers' BWC footage is attached in IA #53 (Board Review #03). At 3:50 into Police Officer Smith's recording, he tells § 87(2)(b) “Let go of the door.” The camera then pulls back, showing that § 87(2)(b) is gripping the edge of the open driver's door with his left hand. Sergeant Filippi tries to pry § 87(2)(b)'s fingers loose. The hand then comes loose. At 4:08 into the recording, § 87(2)(b) is seen gripping the door again with his left hand. Police Officer Smith tells him three more times to let go of the door. He then pulls the hand off again. At 4:22 into the recording, officers connect § 87(2)(b)'s handcuffs. No officers are seen striking § 87(2)(b) anywhere on his body, including on his hand. He is not seen gripping any other parts of the vehicle besides the driver's door.

§ 87(2)(g)  
While § 87(2)(b) is seen trying to prevent the officers from controlling his left arm by grabbing onto his vehicle, the footage shows that the officers overcame this by prying his fingers loose and pulling on his hand. They are not seen striking § 87(2)(b) at any point.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Sergeant John Filippi seized § 87(2)(b)'s property.**

**Allegation (D) Abuse of Authority: Sergeant John Filippi searched the vehicle in which**

**§ 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b) was arrested for an open I-card resulting from an incident in January of 2021. At the time of his arrest, he was sitting in a sedan parked on the side of the road when the officers initially approached him. The vehicle did not belong to him. After the officers ordered § 87(2)(b) to exit the vehicle and placed him in handcuffs, they seized the vehicle and drove it to the 70<sup>th</sup> Precinct stationhouse. There, Sergeant Filippi, Police Officer Casale and Police Officer Smith searched the vehicle. They discovered an identification card and a credit card inside, which they identified as being fakes. § 87(2)(b) was subsequently charged with possession of forged instruments.

§ 87(2)(b) stated the vehicle he was sitting in belonged to his mother, § 87(2)(b). § 87(2)(b) was not present at the start of the incident, but § 87(2)(b) noticed her with the other bystanders when he was loaded into a police vehicle and driven to the stationhouse. § 87(2)(b)'s vehicle was still on-scene when § 87(2)(b) left. He did not see officers seize or search the vehicle himself. While he was in custody at the stationhouse, however, his arresting officers informed him that they had found a fake identification and a fake credit card somewhere inside § 87(2)(b)'s vehicle. He denied any knowledge of these documents. He did not witness officers search the vehicle himself. § 87(2)(b) later told § 87(2)(b) that the police returned her vehicle to her custody later that night.

§ 87(2)(b) stated she is the registered owner of the vehicle § 87(2)(b) sat in during the incident. § 87(2)(b) was inside § 87(2)(b) at the start of the incident. She came outside after § 87(2)(b) was already in handcuffs. § 87(2)(b) called out to § 87(2)(b) and told her to get the vehicle's keys from Police Officer Smith, who was standing by the driver's door. § 87(2)(b) walked up to Police Officer Smith and asked him directly for the keys. Police Officer Smith told her to back away. She offered to show her identification to prove that she was the registered owner. Police Officer Smith again told her to back away. He did not check her identification. Police Officer Smith then got into the vehicle and drove it away. Later that night, § 87(2)(b) traveled to the 70<sup>th</sup> Precinct stationhouse, where officers returned the vehicle to her. She noted at that time that several bags of clothing that § 87(2)(b) kept in the vehicle had been opened and had their contents strewn about the interior. She took this to indicate that the officers had searched the interior of the vehicle after seizing it.

§ 87(2)(b) stated that after § 87(2)(b) was handcuffed, Sergeant Filippi took the keys to § 87(2)(b) vehicle from his pocket. § 87(2)(b) asked if he could take custody of the keys because they belonged to his wife. Sergeant Filippi refused to hand the keys over. § 87(2)(b) accompanied § 87(2)(b) to the stationhouse several hours later, where officers returned the vehicle to them. He did not know if the officers searched the vehicle at any time.

§ 87(2)(b) stated that she and several unspecified bystanders asked the officers to hand over the keys to § 87(2)(b) vehicle after § 87(2)(b) was arrested. The officers told them that they would have the keys over later. A different then took the vehicle's keys from § 87(2)(b) and § 87(2)(b) and several civilians (this time including § 87(2)(b) asked this officer to hand over the keys. The officer dismissed the civilians by waving his hand. The officers then drove § 87(2)(b) vehicle away. § 87(2)(b) did not know what was done with the vehicle after that.

Sergeant Filippi stated that at some point during the incident, § 87(2)(b) told the officers that the vehicle he had been sitting in belonged to his girlfriend. Sergeant Filippi did not recall if any other civilians, including § 87(2)(b) claimed ownership of the vehicle. At another point, § 87(2)(b) asked the officers to give custody of the vehicle to one of the bystanders. Sergeant Filippi did not know who this person was. He decided not to give the vehicle to that person because he could not verify if they were the registered owner. Sergeant Filippi decided to take the vehicle into custody to determine who its true owner was. He explained that the officers were unable to conduct an investigation into the vehicle's owner at § 87(2)(b) because the bystanders' presence made the situation too chaotic. He denied that the vehicle was seized for any other reason beyond determining its owner. He did not recall if the vehicle was parked properly. He did not suspect that there was any contraband inside the vehicle. An officer drove the vehicle to the 70<sup>th</sup> Precinct stationhouse. Sergeant Filippi did not recall who transported the vehicle. Once it arrived, Sergeant Filippi supervised an inventory search of the vehicle. He explained that it is standard procedure to conduct an inventory search on all vehicles brought into police custody. He denied that he ordered the search for any other reasons beyond this procedural requirement. Sergeant Filippi did not know what happened to the vehicle after it was searched. He did not recall if the vehicle's owner was ultimately identified.

Police Officer Casale stated that officers seized the vehicle because § 87(2)(b) had been sitting in at when the officers approached him, because they were concerned that the vehicle would be stolen if left unattended, and that it might contain evidence. When asked if he suspected that the vehicle contained evidence, Police Officer Casale stated that he thought it was possible that there was a gun in the vehicle because § 87(2)(b) was a known gang member. At some point



during the arrest, § 87(2)(b) did state that the vehicle was registered to somebody else. Police Officer Casale did not know who the actual owner was. He did not recall if there was any discussion with the civilians about giving custody of the vehicle to one of them but stated that the officers would not have considered this option because it is standard procedure to seize vehicles when their occupants are arrested. Police Officer Casale did not recall who transported the vehicle to the stationhouse. Once it was there, he and his partners searched the vehicle. He explained that the search was done because it is standard procedure to search all vehicles coming into police custody.

Police Officer Smith stated that he did not recall if any of the bystanders made any statements to the officers about the ownership of the vehicle. He did not recall if any of them asked to take custody of the vehicle. Police Officer Smith stated that the vehicle was seized and searched because it is standard procedure to do so when a vehicle is involved in an arrest. Police Officer Smith had no suspicion that the vehicle contained contraband. Police Officer Smith believed that the vehicle was eventually released to its registered owner. He did not recall who the owner was but recalled that she was female.

Several property vouchers were prepared for this incident. Invoice § 87(2)(b) records that the vehicle § 87(2)(b) was riding in § 87(2)(b), was vouchered for safekeeping. It was released that same day to § 87(2)(b) who was identified as the registered owner. Invoice § 87(2)(b) records that a fake credit card and fake driver's license were vouchered as arrest evidence. A third voucher, invoice § 87(2)(b), records various items of § 87(2)(b)s, including his phone, keys, and clothing items, being vouchered for safekeeping (Board Review #15).

The officers' BWC footage is attached in IA #53 (Board Review #03). As noted earlier, before the officers handcuffed § 87(2)(b) he called out for his mother, stating that he wanted her to take custody of his personal belongings and the vehicle he had been sitting in. The footage also shows that both Sergeant Filippi's and Police Officer Casale's BWCs fell from their chests while they were handcuffing § 87(2)(b). The officers pick the BWCs back off the ground but appear to accidentally switch units with each other. As a result, Sergeant Filippi wears Police Officer Casale's BWC after § 87(2)(b) is handcuffed and vice-versa. Later in the incident, right before the officers depart from the arrest location, Sergeant Filippi and Police Officer Casale realize that they are wearing each other's BWC and switch back to their original units.

At 7:00 into the recording on Police Officer Casale's BWC footage, an unidentified female approaches the officers and asks, "Can I get his phone and his keys, please?" Sergeant Filippi states, "No." Police Officer Casale tells her to step back. At 12:30 into the recording, several officers escort § 87(2)(b) away from the vehicle he had been sitting in earlier, towards a marked SUV. Sergeant Filippi, wearing Police Officer Casale's BWC, stays by the original vehicle. A voice off-screen asks, "Get the key for the car. Give me have the keys for this car." An unidentified male then states, "Give my sister his car keys." Sergeant Filippi states, "He can get it back at the precinct." At 13:00 into the recording, another unidentified male points at somebody off-screen and states, "This the owner. This her car." Sergeant Filippi tells her, "You can get it at the precinct." Another voice then states, "He don't give y'all consent to search the car." At 13:25 into the recording, § 87(2)(b) approaches the vehicle. She states, "This is my son's... what's going on?" In the background, another voice is heard shouting, "This is her car." At 15:50 into the recording, § 87(2)(b) approaches the officers and asks, "You have the car keys, sir? May I have the car keys for my son's car?" Sergeant Filippi asks, "Whose car is it? Where..." He does not receive a response. Sergeant Filippi then turns towards the sidewalk. It shows that there is a fenced-in parking lot. There is a closed gate on the fence, with a sign posted that reads, "No

parking, 24 hour active driveway, vehicles will be towed at owner's expense." At 17:00 into the recording, Sergeant Filippi and Police Officer Casale realize that they are wearing each other's BWCs and switch units. When Police Officer Casale re-affixes the camera, he faces back towards the sidewalk. It shows that the vehicle is parked in front of the curb cut at the parking lot's entrance.

Based on the BWC footage, § 87(2)(g) § 87(2)(b) told the officers before he was handcuffed that he wanted § 87(2)(b) to take custody of the vehicle. He did not explicitly identify her as the vehicle's owner. After § 87(2)(b) was handcuffed, several civilians, including § 87(2)(b) told the officers that § 87(2)(b) was the vehicle's owner and asked for the vehicle to be given over to her custody.

Officers may impound a vehicle when they have a reasonable basis to believe that it was used in the commission of a crime. Officers may also impound a vehicle to further public safety or to fulfill a community caretaking function, such as moving an illegally parked vehicle. An impoundment will be considered unlawful if these factors are not met. People v. Italia, 138 A.D.2d 743 (App. Term, 2<sup>nd</sup> Dept., 1998). People v. Rivera, 192 A.D.3d 920 (App. Term, 2<sup>nd</sup> Dept., 2021) (Board Review #16-17).

In People v. Tardi, 28 N.Y.3d 1077 (2016), an officer was permitted to impound a vehicle in a parking lot after arresting its owner because it would be in danger of being vandalized if left unattended. The driver was alone at the time. The officers were not required to first inquire as to whether the driver could arrange for removal of a vehicle or to contact the vehicle's registered owner before impounding the vehicle (Board Review #18).

§ 87(2)(g)

The officers provided conflicting accounts of why the vehicle was seized. None of their reasons were sufficient to justify the impoundment. Sergeant Filippi, the supervisor who authorized the seizure, stated that the vehicle was taken into custody to verify its ownership given conflicting claims about who the registered owner was. As the BWC footage shows, however, § 87(2)(b) and the bystanders all consistently stated that § 87(2)(b) who was on-scene and identified herself to the officers, was the owner. § 87(2)(g)

Police Officer Casale stated that the vehicle was taken for safekeeping to ensure that nobody stole it while § 87(2)(b) was in custody. Neither the officers nor the civilians, however, articulated why the vehicle might have been in danger if left in place. Any risk that the vehicle was in would have also been addressed by turning the vehicle over to § 87(2)(b)

Police Officer Smith stated that the vehicle was seized solely because § 87(2)(b) had been sitting in it during the arrest, and that it is standard procedure to seize vehicles when their occupants are arrested. This is false, as officers must demonstrate that the vehicle was involved in criminal activity or that impounding the vehicle furthers a community caretaking function. In this instance, there was no suspicion that the vehicle itself was involved in criminal activity. There was no link between the burglary that § 87(2)(b) was arrested for and the vehicle. All three officers denied having any direct suspicion that § 87(2)(b)'s vehicle contained contraband or other evidence of a crime.

While none of the officers recalled § 87(2)(b)'s vehicle being parked improperly, the BWC

footage shows that it was blocking access to a parking lot, in violation of posted signage. This opens the possibility that the vehicle's seizure was consistent with the community caretaking function, as it would remove a traffic impediment. This impediment, however, would just have easily been remedied by handing the vehicle over to § 87(2)(b) as § 87(2)(b) directly requested.

Tardi asserts that officers are not required, before impounding a vehicle, to search for alternative courses of action, such as searching for another motorist to take custody of the vehicle or reaching out to the vehicle's owner. § 87(2)(g). As discussed above, the BWC footage shows that § 87(2)(b) ownership of the vehicle was never disputed during this incident. § 87(2)(b) and § 87(2)(b) both told the officers directly to give the vehicle over to § 87(2)(b) possession. There was no need to do any further investigation of the vehicle, either at the scene of the arrest or at the stationhouse, to confirm the vehicle's ownership. Thus, the officers did not have to seek out an alternative to impoundment because the civilians provided it to them from the start of the interaction.

§ 87(2)(g)  
[REDACTED]

#### **Allegations Not Pleaded**

- § 87(2)(b) and § 87(2)(b) both stated that when § 87(2)(b) retrieved her vehicle from the stationhouse, there was damage on the vehicle's driver's side. § 87(2)(b) could not describe the damage in further detail. § 87(2)(b) stated that the bottom of the driver's door frame was dented. Neither of them knew how this damage came about. They did not provide photographs or any other documentation of the damage. None of the other officers or civilians alleged that the vehicle suffered damage. Police Officer Casale and § 87(2)(b) however, both stated that after § 87(2)(b) exited the vehicle, he stepped onto the door frame, with both his feet on the bottom of the frame. None of the other accounts mentioned any officers or civilians touching the bottom of the door frame. The BWC footage does not clearly show the bottom of the door frame during § 87(2)(b)'s arrest. It does not show the officers damaging the vehicle in any way when they conducted the inventory search at the stationhouse. § 87(2)(g)

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been a party to one previous CCRB complaint and six allegations (Board Review #19).
  - § 87(2)(b) [REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review #20).
- Sergeant Filippi has been a member of the service for twelve years and has been identified

as a subject in eight other CCRB complaints and twelve allegations, none of which were substantiated. § 87(2)(g)

### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 10, 2021, the NYC Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident.

- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Squad: 15

Investigator:	Owen Godshall	SI Owen Godshall	7/18/2022
	Signature	Print Title & Name	Date

Squad Leader:	Simon Wang	IM Simon Wang	07/22/22
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date